

PROGRAM/SUBJECT: Counties - Tax Sales, Redemptions, and Tax Deeds	REF: CNTY-15
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I. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

TAX SALES – PERSONAL PROPERTY – continued:

1. Compliance Requirements - continued:

- The proceeds of the sale must be used first to reimburse the county for all costs and charges incurred in seizing the property and conducting the sale. For seizing and selling personal property, the county treasurer shall charge \$25 or a fee set by the county commissioners, plus the cost, as defined in Section 15-17-121, MCA, of the collection of delinquent personal property taxes. The cost must be assessed against the delinquent taxpayer and is in addition to any sheriff's fees, mileage, and costs as provided in Section 7-32-2141 and 7-32-2143, MCA, which must be assessed against the delinquent taxpayer. Any excess, up to the total amount of the taxes owed, must be distributed proportionally to the various funds that would have received taxes if they had been paid before becoming delinquent. Any remaining excess, up to the amount of the penalty and interest owed, must then be distributed proportionally to the fund that would have received the penalty and interest if they had been paid in full. Finally, any money collected in excess of the delinquent taxes, penalties, interest, costs, and charges must be returned to the person owning the property prior to the sale, if known. (Section 15-17-911(4) and (6), MCA)
- The county commission, in its discretion, may cancel any personal property taxes, including penalty, interest, costs, and charges that remain unsatisfied after the property upon which the taxes were assessed has been seized and sold. One copy of the order of cancellation must be filed with the county clerk and recorder and one copy with the county treasurer. (Section 15-17-911(9), MCA)

Suggested Audit Procedures:

- Review the delinquent personal property tax list and determine whether required efforts have been made to seize and sell personal property owned by a delinquent taxpayer.
- Through inquiry of county personnel, determine if a personal property tax sale was conducted during the audit period. If so, obtain documentation (from review of commission minutes, files, etc.) of the public auction and the bid price of selected properties.
- Determine that the proceeds of the sale were disbursed appropriately, as specified above, by tracing selected sale receipts to final disposition.
- Verify that any delinquent taxes remaining after the sale were canceled only by order of the county commissioners.

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I. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

TAX SALES – REAL PROPERTY:

2. Compliance Requirements:

- The county treasurer shall conduct a tax sale of all real property and improvements on which taxes are delinquent. (Section 15-17-211, MCA)
- Prior to the sale, the county treasurer must publish a notice stating the time, date, and place of the sale and referencing a listing of names of the delinquent taxpayers and the amounts of delinquent taxes and all accrued penalties, interest and costs. This notice must be published once a week for 3 consecutive weeks in the newspaper designated for county printing as provided in Section 7-5-2411, MCA; or, if no newspaper is published in the county, the notice must be posted in 3 public places. The notice must be first published or posted on or before the last Monday in June. The sale may not be held less than 21 days or more than 28 days from the date of first publication, except that the treasurer may postpone the day of commencing the sale on a day-to-day basis without publishing a new notice, provided that the sale is held within 3 weeks from the day first fixed. (Sections 15-17-122 and 15-17-211(2), MCA)
- The county treasurer shall file a copy of the notice with the county clerk, accompanied by an affidavit stating the name of the newspaper and its address of publication, and the dates the notice was published (or the locations and date of the posting). (Section 15-17-123, MCA)

Suggested Audit Procedure:

- Obtain a copy of the required affidavit, and review minutes of commission meetings, to determine that notification of the annual tax sale, and the tax sale itself, were conducted properly.

3. Compliance Requirements:

- Upon receipt of all delinquent taxes, penalties, interest, and costs (thereby establishing a “property tax lien”) and after receiving proof of mail notice to the person to whom the property was assessed, the county treasurer shall prepare a tax sale certificate that must contain:
 - a. the date on which the property taxes became delinquent;
 - b. the date on which a property tax lien was sold at a tax sale;
 - c. the name and address of record of the person to whom the taxes were assessed;
 - d. a description of the property on which the taxes were assessed;
 - e. the name and mailing address of the purchaser;
 - f. the amount paid to liquidate the delinquency, including a separate listing of the amount of the delinquent taxes, penalties, interest, and costs;

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I. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

TAX SALES – REAL PROPERTY - continued:

3. Compliance Requirements - continued:

- g. a statement that the certificate represents a lien on the property that may lead to the issuance of a tax deed for the property;
 - h. a statement specifying the date on which the purchaser will be entitled to a tax deed; and
 - i. an identification number corresponding to the tax sale certificate number recorded by the county treasurer as required by Section 15-17-213, MCA.

(Section 15-17-212(1), MCA)
- The certificate must be signed by the county treasurer and delivered to the purchaser. One copy must be filed by the treasurer with the county clerk. A copy of the certificate must also be mailed to the person to whom the taxes were assessed, at the address of record, together with a notice that the person may contact the county treasurer for further information on property tax sales. In addition, the tax sale is to be recorded in the office of the treasurer. (Sections 15-17-212(2) and 15-17-213, MCA)
- If no one pays the delinquent taxes on the first day of the tax sale, the county is considered to be the purchaser. A separate certificate may be issued for each such property, or the treasurer may reference a listing on a single certificate. (Section 15-17-214, MCA)
- 21 days after the first day of the tax sale, the county treasurer is to list all property sold at the tax sale, and shall indicate that the county is the purchaser of the unsold property. (Section 15-17-214, MCA)

Suggested Audit Procedure:

- Select several delinquent taxes from the listing referenced in the published notice. Verify that those items sold at the tax sale have corresponding tax sale certificates, and that the amount of delinquent taxes on the certificates correspond to the amount on the listing. Verify that the amount of penalty and interest on the certificates are accurate and that any costs can be documented. (**NOTE:** “Costs” are defined in Section 15-17-121, MCA.) For those items not sold at the tax sale, verify that they are included in the listing of properties for which the county is the purchaser.

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I. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

TAX SALES – REAL PROPERTY - continued:

4. Compliance Requirement:

- All money received from the tax sale, other than costs as defined in Section 15-17-121, MCA, should be credited to the various funds to which the taxes would have originally been distributed and in the same proportion as the original taxes would have been distributed. Any money received for costs or any money remaining after crediting the separate funds must be deposited to the general fund. (Section 15-17-322, MCA)

Suggested Audit Procedure:

- Trace the proceeds of selected tax sales to determine that they are distributed as required by statute and noted above.

5. Compliance Requirements:

- If the county is the purchaser, the treasurer must assign the tax sale certificate to anyone paying the delinquent taxes, penalties, interest, and costs, accruing from the date of delinquency, after providing proof of mail notice to the person to whom the property was assessed. (Section 15-17-323(1) & (5), MCA).
- This assignment must be in the form of an "assignment certificate", the details of which are presented at Section 15-17-323(2), MCA. (Section 15-17-323, MCA)
- An assignment made by a purchaser other than the county may be made for any consideration whatsoever. Such an assignment is legal and binding only upon filing with the county treasurer a statement that the purchaser's or other assignee's interest in the property has been assigned. (Section 15-17-323(3), MCA)
- Whenever property that has been struck off to the county at a tax sale is subject to the lien of delinquent special assessments, and the county has not made assignment to anyone, at the request of the municipality the county treasurer shall assign the tax sale certificate to the municipality upon payment of any delinquent taxes (excluding assessments) and costs, without penalty or interest. (Section 15-17-317, MCA)

Suggested Audit Procedures:

- Inquire of county personnel if any tax sale certificates were assigned during the audit period. If so, observe selected assignment certificates or statements to verify that they have been accurately prepared.
- Determine that payments to the county for assignments were in accordance with statutory requirements, and were distributed as required by statute.

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I. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

REDEMPTIONS:

6. Compliance Requirements:

- Except as provided in the following compliance requirement, redemption of a property tax lien acquired at a tax sale may be made by the owner (or other interested party as defined in Section 15-18-111(3), MCA) within 36 months from the date of the first day of the tax sale or within 60 days following the giving of the notice required in Section 15-18-212, MCA (see below), whichever is later. (Section 15-18-111(1), MCA)
- For property subdivided as a residential or commercial lot upon which special improvement district assessments or rural special improvement district assessments are delinquent and upon which no habitable dwelling or commercial structure is situated, redemption of a property tax lien acquired at a tax sale or otherwise may be made by the owner, the holder of an unrecorded or improperly recorded interest, or any interested party within 24 months from the date of the first day of the tax sale or within 60 days following the giving of the notice required in Section 15-18-212, MCA (see below), whichever is later. (Section 15-18-111(2), MCA)
- To redeem the property, the redemptioner must pay the amount for which the property tax lien was sold (including penalties, interest, and costs) and the subsequent taxes assessed against the property (including penalty and interest). (Sections 15-18-112, MCA)
- The property tax lien may also be redeemed for a particular tax year by a partial payment of that tax year as provided in Section 15-16-102(5), MCA, if the property tax lien for the year in which the partial payment is made is owned by the county, and the tax deed has not been issued pursuant to Section 15-18-211, MCA. Section 15-16-102(5), MCA, provides that a taxpayer may pay current year taxes without paying delinquent taxes. Also, the county treasurer shall accept a partial payment equal to the delinquent taxes, including penalty and interest, for one or more full taxable years, provided both halves of the current tax year have been paid. Payment of taxes for delinquent taxes must be applied to the taxes that have been delinquent the longest. The payment of the current tax year is not a redemption of the property tax lien for any delinquent tax year. (Sections 15-18-112 and 15-16-102(5), MCA)

(Note: Effective October 1, 2003, a payment by a co-owner of an undivided ownership interest that is subject to a separate assessment otherwise meeting the requirements of Section 15-16-102(5)(a), MCA, is not a partial payment.)

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I. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

REDEMPTIONS - continued:

6. Compliance Requirements - continued:

- Upon payment of all delinquent taxes, including penalties, interest, and costs, to the county treasurer and refunded to the person listed as purchaser, the county treasurer must then mark the word "redeemed" and the date and the name of the redemptioner on the tax sale certificate or in the record required to be maintained by the county treasurer under Section 15-17-214, MCA. Upon redemption, the county treasurer is required to execute a certificate of redemption to be filed or recorded with the clerk and recorder. (Section 15-18-113, MCA)
- When a property tax lien for which the county is listed as purchaser is redeemed, the redemption money (including penalties and interest but excluding costs) must be distributed to the various funds to which the taxes would have originally been distributed and in the same proportion as the taxes would have originally been distributed. (Section 15-18-114(1), MCA)
- When a property tax lien for which the recorded purchaser is other than the county is redeemed, the county treasurer shall distribute to the person listed as the purchaser on the tax sale certificate and in the record kept by the county treasurer the amount the purchaser paid the county for the property tax lien plus any subsequent amount paid pursuant to Section 15-18-112, MCA, plus interest as specified in Section 15-16-102, MCA, from the date of payment until the date of redemption. Any money remaining after distributing redemption proceeds to the purchaser other than the county shall be distributed to the various funds, as noted above. The distribution returned to the purchaser must be made by certified mail, return receipt requested, at the address listed on the tax sale certificate. If the money distributed to the purchaser is returned unopened, the treasurer shall publish once a week for 2 consecutive weeks in the official newspaper of the county a notice stating that the county treasurer has the money and that the money will be held for a period of 1 year from the date of publication. If the money is not claimed within 1 year, the purchaser relinquishes all claim to the money and the money is to be deposited to the general fund. (Section 15-18-114(2), MCA)
- The county treasurer is required to keep an account of all money paid in redemption and when and to whom distributed. (Section 15-18-114(4), MCA).

(Note: A redemption ledger in some form should be maintained. In addition, a general ledger agency fund for redemptions (BARS Fund No. 7150 - Redemptions) should be maintained.)

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I. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

REDEMPTIONS - continued:

Suggested Audit Procedures:

- Review activity in the redemption ledger and in the “Redemptions” agency fund. Select several transactions and perform the following tests:
 1. Verify that redemption of the tax sale certificate was made within the allowed redemption period.
 2. Verify that the amount paid in redemption includes the amount for which the property tax lien was sold (including penalties, interest, and costs) and the subsequent taxes assessed against the property (including penalty and interest).
 3. Verify that the distribution of redemption monies is statutorily correct.
 4. If redemption money is unclaimed, obtain documentation of the required newspaper publications. Review amounts held in the redemption agency fund to verify that significant amounts are not held in the fund in excess of the one-year period provided by statute.

TAX DEEDS:

7. Compliance Requirements:

- Except as provided in the following compliance requirement, if the property tax lien is not redeemed in the time allowed by statute (Section 15-18-111, MCA), the county treasurer shall grant the purchaser a tax deed for the property. A tax deed issued under Title 15, Chapter 18, MCA, conveys to the grantee absolute title to the property described therein as of the date of the expiration of the redemption period, free and clear of all liens and encumbrances except as noted in Section 15-18-214, MCA. (Sections 15-18-211(1) and 15-18-214, MCA)
- If the purchaser is the county and no assignment has been made, the county treasurer may not issue a tax deed to the county unless the board of county commissioners, by resolution, directs the treasurer to issue a tax deed. (Section 15-18-211(3), MCA)
- The county treasurer shall charge the purchaser \$25 plus all actual costs incurred by the county in giving the notice or assisting another purchaser or assignee in giving the notice required in Section 15-18-212, MCA, (see following compliance requirement) for making the deed. This fee is to be deposited in the county general fund. If the purchaser is the county, no fee may be charged for making the deed. (Section 15-18-211(2), MCA)

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I. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

TAX DEEDS - continued:

7. Compliance Requirements - continued:

- Not more than 60 days prior to and not more than 60 days following the expiration of the redemption period provided in Section 15-18-111, MCA, the purchaser must give notice that a tax deed may be issued unless the property tax lien is redeemed. (If the purchaser is the county, the county clerk must give the notice.) This notice must be given by certified mail, return receipt requested, to all persons considered interested parties in the property and to the current occupant, if any, of the property. The address to which the notice must be sent is, for each interested party, the address disclosed by the records in the office of the county clerk and, for the occupant, the street address or other known address of the subject property (Section 15-18-212(1) and (4), MCA)
- In all cases in which the address of an interested party is not known, the person required to give notice shall, within the period described above or not less than 60 days or more than 120 days prior to the date upon which the county treasurer will otherwise issue a tax deed, whichever is appropriate, publish once a week for two successive weeks, in the official newspaper of the county or another newspaper as the board of county commissioners may by resolution designate, a notice containing the information required by Section 15-18-212, MCA. (Section 15-18-212(5), MCA)
- Proof of notice must be filed with the county clerk within 30 days of mailing or publishing the notice. If the purchaser is the county, the proof of notice must be filed before issuance of the tax deed. (Section 15-18-212(7), MCA).
- If a purchaser fails to give the required notice (i.e., no proof of notice filed with the county), the county treasurer shall notify the purchaser of the obligation to give notice. If, within 120 days after the treasurer mails this notice of obligation, the purchaser again fails to give the required notice, the treasurer shall cancel the property tax lien evidenced by the tax sale certificate or the assignment. Upon cancellation of the property tax lien, the treasurer must file or record with the clerk and recorder a notice of cancellation, on a form provided for in Section 15-18-217, MCA. (Section 15-18-212(3), MCA)

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I. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

TAX DEEDS - continued:

7. Compliance Requirements - continued:

- If the county is the purchaser, and the county commissioners do not direct the county treasurer to issue a tax deed during the period described in Section 15-18-212(1), MCA (60 days prior to and not more than 60 days following the expiration of the redemption period provided in 15-18-111, MCA), but the board of county commissioners subsequently does direct the county treasurer to issue a tax deed, the county clerk shall notify the interested parties and the current occupant of the pending tax deed issuance. This notification is to be made not less than 60 days or more than 120 days prior to the date on which the county treasurer will issue the tax deed. An exception to this is if the commissioners direct the treasurer to issue the tax deed within 6 months after giving the notice described in Section 15-18-212(1), MCA. In that case, the additional notice need not be given. (Section 15-18-212(2), MCA)

Suggested Audit Procedures:

- Inquire of county personnel and review tax files to determine if any tax deeds were issued during the audit period. If so, select several for testing.

(Note: For example, a sample may be selected from tax sale certificates dated 36 months prior to the beginning of the audit period and which have not been redeemed.)

- If the tax deed is issued to the county:
 1. Verify that there is a resolution on file directing the treasurer to issue a tax deed.
 2. Verify that proof of notice dated prior to the issuance of the tax deed is on file with the county clerk.
- If the tax deed is issued to a purchaser other than the county:
 1. Verify that the \$25 fee (in addition to any actual costs incurred by the county in giving the notice) has been charged the purchaser and has been deposited to the general fund.
 2. Verify that proof of notice is on file with the county clerk. This proof of notice should be dated during the period described above, and should be filed within 30 days thereof.
- If the purchaser fails to give the required notice, verify that a notice of cancellation of the property tax lien has been filed or recorded with the clerk and recorder.

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I. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

SALE/LEASE OF TAX DEED LAND:

8. Compliance Requirements:

- Within 6 months of acquiring land by tax deed, the board of county commissioners must do one of the following:
 1. Sell the land at public auction. The sale may not be made for a price less than the sales price determined and fixed by the board prior to making the order of sale. The sales price may be set in an amount sufficient to recover the full amount of taxes, assessments, penalties, and interest due at the time the tax deed was issued to the county plus the county's costs in taking the tax deed and in conducting the sale and additional taxes due, if any, at the time of the sale. If bids are not received, the board must order another auction sale of the land within 6 months, and may, if required by the circumstances, redetermine the sales price of the land. In the period of time between these two auction sales, the board may sell the land by negotiated sale at a price that is not less than the sales price established for the original auction. If no bid is received at this second auction sale, the board may dispose of the land as provided in Section 7-8-2218, MCA (sell the land at private sale with the purchase price being not less than 70% of the appraised value).
 2. Donate the land to a municipality, if the land is within the incorporated boundaries of the municipality. The municipality must consent to the donation.
 3. Donate the land to a nonprofit corporation for the purpose of constructing:
 - (1) a multifamily housing development operated by the corporation,
 - (2) single-family houses to be sold to low-income persons, or
 - (3) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the nonprofit corporation to pursue purposes specified in its articles of incorporation, including the sale, lease, rental, or other use of the donated land and improvements.
 4. Retain the land for county purposes pursuant to Section 7-8-2501, MCA. (Section 7-8-2301, MCA)
- Notice of the sale, donation, or retention of tax-deed lands must be given by publication as provided in Section 7-1-2121, MCA. The notice must include a list of all lands to be sold, donated, or retained, the fair market value of the lands as determined and fixed by the Department of Revenue, and the time and place of sale, donation, or retention. If the land is to be sold, the sales price as determined under Section 7-8-2301, MCA, must be stated in the notice. (Section 7-8-2302, MCA)
- At any time up to 24 hours before the time fixed for the first offering of property for sale or the time fixed for the donation or retention of the property pursuant to Section 7-8-2301, MCA, the taxpayer or the taxpayer's successor in interest or legal representative may repurchase the property from the county. The property may be repurchased, subject to the reservations provided for in Section 7-6-2305, MCA, by

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I. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

SALE/LEASE OF TAX DEED LAND - continued:

8. Compliance Requirements - continued:

- payment to the county of the full amount of the taxes, assessments, penalties, and interest due on the land at the time of taking the tax deed plus interest on the full amount at the rate provided for in Section 15-16-102, MCA, from the date of the tax deed to the date of repurchase as well as the costs of the county in taking the tax deed and additional taxes or assessments due, if any, at the time of repurchase.
(Section 7-8-2303, MCA)
- Sale of tax-deed land must be made for cash, or on terms approved by the board of county commissioners. If the sale is made on terms, at least 20% of the purchase price must be paid in cash at the date of sale and the remainder may be paid in installments extending over a period not to exceed 5 years. All deferred payments bear interest at a rate established by the county commissioners. If a sale is made on terms, the chairman of the board shall execute a contract containing the terms that are provided by a contract approved by the Department of Revenue.
(Section 7-8-2304, MCA)
- Upon sale of the property, the proceeds must be distributed as follows:
 1. to the general fund for reimbursement of expenditures made in connection with procurement of the tax deed and holding of the sale;
 2. if there is any money remaining after the payment of the amount specified above, and the remainder is:
 - a. in excess of the aggregate amount of all taxes and assessments accrued against the property for all funds and purposes, without penalty and interest, then as much of the remaining proceeds must be credited to each fund or purpose as each fund or purpose would have received had the taxes been paid before becoming delinquent, and all excess must be credited to the county general fund; or
 - b. less in amount than the aggregate amount of all taxes and assessments accrued against the property for all funds and purposes, without penalty or interest, the proceeds must be prorated between the funds and purposes in the proportion that the amount of taxes and assessments accrued against the property for each fund or purpose bears to the aggregate amount of taxes and assessments accrued against the property for all funds and purposes.

(Section 7-8-2306, MCA)
 - The county may reserve not to exceed 6 ¼% royalty interest in the oil, gas, other hydrocarbons, and minerals produced and saved from any tax-deed lands it sells. In such a case, any money received from the royalty interest must be credited to the general fund, except that no more than 50% may be allocated to the road fund.
(Section 7-8-2305 and 2306(2), MCA)

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SALE/LEASE OF TAX DEED LAND - continued:

8. Compliance Requirements - continued:

- Upon lease of tax-deed property, any amount received as rent, royalty, or otherwise, including interest received on the payments under either a sale or lease, must be apportioned on the current year's levy and must be credited as earnings of tax-deed property and not considered as a credit to tax-deed accrued accounts as in the case of the principal received from sales of tax-deed lands. (Section 7-8-2306(3), MCA)

Suggested Audit Procedures:

- Through inquiry of county personnel, the review of minutes of county commission meetings, and the review of tax deed files, determine whether the county has taken tax deed to any properties during the audit period. If so, verify that within 6 months of the issuance of tax deed, the county has (a) sold the land at public auction, (b) donated the land to a municipality, (c) donated the land to a nonprofit corporation for the purposes noted above, or (d) retained the land for county purposes.
- Verify, through review of documentation, that the required notices were made for disposal of the land.
- If cash was received for the sale of tax-deed land, trace the proceeds to determine that the general fund was first reimbursed for any incurred costs; that any remaining proceeds were distributed to the various funds in the same manner as if the taxes and assessments had been paid before the delinquency, up to the original amount; and that any excess was distributed to the county general fund.
- If the county reserved a royalty interest in the tax-deed lands sold, verify that moneys received from the royalty interests were distributed to the county general fund, except that no more than 50% can be distributed to the county road fund.
- If the sale of tax-deed land was made on terms, obtain a copy of the contract. Verify that the term of the contract was for 5 years or less.
- If the county leased tax-deed property during the audit period, determine that lease proceeds were apportioned on the current year's levy.